Calendar No. 616

100TH CONGRESS *2d Session*	SENATE	REPORT 100-317

PRESIDENTIAL TRANSITIONS EFFECTIVENESS ACT

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2037

TO AMEND THE PRESIDENTIAL TRANSITION ACT OF 1963 TO PROVIDE FOR A MORE ORDERLY TRANSFER OF EXECUTIVE POWER IN CONNECTION WITH THE EXPIRATION OF THE TERM OF OFFICE OF A PRESIDENT

APRIL 20 (legislative day, APRIL 11), 1988.—Ordered to be printed

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Mr. GLENN, from the Committee of Governmental Affairs, submitted the following

REPORT

[To accompany S. 2037]

The Committee on Governmental Affairs, to which was referred the bill (S. 2037) to amend the Presidential Transition Act of 1963 to provide for a more orderly transfer of executive power in connection with the expiration of the term of office of a President, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends the bill, as amended, do pass.

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I. PURPOSE

The purpose of S. 2037, the Presidential Transitions Effectiveness Act, is to (1) amend the Presidential Transition Act of 1963, as amended in 1976, to provide an increase in public funding for the post-election transition from $2,000,000 to $3,500,000, and to index future transition funding to an appropriate measure of inflation in actual transition costs, (2) provide that up to $200,000 may be appropriated for the purpose of providing reimbursement to a nation-

al party committee for specific transition planning expenses, (3) require that the national party committees, as a condition of receiving transition planning funds, disclose to the Administrator of the General Services Administration within 90 days following the election information concerning the date of contribution, source, amount, and expenditure of all private money received for the purposes of transition planning, (4) require that the President-elect and the Vice President-elect, also as a condition of receiving funds under the Act, disclose to the Administrator within 90 days of the inauguration information concerning the date of contribution, source, amount, and expenditure of all private money received for the purposes of preparing for the assumption of official duties as President or Vice President, and, for the 1988–89 transition only, that they also provide an estimate of the aggregate value of in-kind contributions made to the transition for transportation, hotel and other contributions, suitable office space, and furniture, furnishings, office machines and equipment, and office supplies, and (5) require that the President-elect and Vice President-elect, also as a condition of receiving funds under the Act, shall disclose the names of all transition personnel (full-time or part-time), their most recent employment, and the sources of funds which support their transition activities, and require that this roster be disclosed to the Administrator on a monthly basis during the transition, and on the thirtieth day following the inauguration. The bill also makes several changes in the accounting requirements under the Presidential Transition Act of 1963, provides for a clarification of moving expenses available to presidential appointees, and amends the Vacancies Act of 1868 to cover all executive agencies and extend the amount of time that a vacancy caused by death or resignation may be filled temporarily from 30 days to 120 days.

II. Background

S. 2037 reflects an effort by the Governmental Affairs Committee to ensure that future transitions, including the 1988 transition, are properly funded and supported.

It has been twelve years since Congress last adjusted the funding ceilings in the Presidential Transition Act of 1963 (the Act). That Act was passed to provide for the smooth transfer of power between administrations, originally providing $450,000 to the incoming presidential administration to cover the costs of preparing for the assumption of office—for example, staff, office space, and travel. The General Services Administration (GSA) was made responsible for making sure all of the expenses were legitimate. The General Accounting Office (GAO) has audited all public expenditures under the Act, publishing reports following the transitions of 1968, 1974, 1976, and 1980. The Act does not cover transitions in which the President-elect is the incumbent President.

Prior to passage of the 1963 Act, transitions were privately funded. President-elects either had to raise the money for the transition by themselves or rely on the national party committees. Partly in response to the costs of the 1960 transition, President John F. Kennedy appointed a bipartisan Commission on Campaign Costs in 1961 to examine the financing of presidential campaigns,

including the costs of presidential transitions. In April, 1962, the Commission issued a comprehensive report to the President recommending numerous changes, including recommendation number 8, which reads in part:

> In 1952–53, the cost of a special Republican committee of the transition period between the election and the inauguration exceeded $200,000. In 1960–61, the cost to the Democratic National Committee totaled at least $360,000. These funds were used largely to pay for office space, communications, staff salaries, and transportation. These costs have increased the financial pressures on the parties. They are not partisan costs, however, and they should not be a charge on the parties. The persons primarily involved are no longer candidates for office; they are President-elect and Vice-President-elect of the United States.
>
> We endorse proposals to "institutionalize" the transition from one administration to another when the party in power changes. Important reasons for doing so exist wholly aside from the costs to the parties. The new President must select and assemble the staff to man his administration, and they in return must prepare themselves for their new responsibilities.

President Kennedy forwarded this Commission recommendation to Congress on May 29, 1963. In his transmittal letter, he wrote that:

> It is entirely desirable and appropriate that the Federal Government provide funds for paying the reasonable and necessary costs of installing a new administration in office. There are important reasons, aside from costs, to institutionalize the change in party power from one administration to another. An incoming President must select and assemble responsible public officials who must prepare themselves for their new responsibilities. Thus I recommend that the outgoing President be authorized to extend needed facilities and services of the Government to the President-elect and his associates.

In passing the Presidential Transition Act of 1963, Congress expressed its view that transitions were public in nature, and that the legitimate costs of a transition ought to be covered in large part by government funds. The Act was signed into law on March 4, 1964, as Public Law 88–277, and has been amended once, in 1976, to raise the ceiling on the public allotment for the incoming transition from $450,000 to $2,000,000, where the funding ceiling remains today. The Act was also amended to increase the amount of support for the outgoing President from $450,000 to $1,000,000.

In offering amendments to the Presidential Transition Act, the Committee recognizes the importance of transitions for effective governmental. There are few points in the governmental calendar which are so filled with such great promise, yet so vulnerable to chaos, which are so dependent on continuity to achieve change.

The Committee also recognizes that a presidential transition is certain in 1988. The goal of S. 2037, therefore, is to provide ade-

quate resources for the incoming administration, and to make changes in the process of presidential transitions that will help not just the next President-elect, but Presidents-elect far into the future.

S. 2037 deals with two basic concerns raised in hearings held before the Committee on September 17 and October 14, 1987, and February 17, 1988.

TRANSITION FUNDING

The first concern is establishing the proper level of support needed to cover the legitimate public costs of presidential transitions. Accounting for the effects of inflation, the $2,000,000 provided to President-elect Carter in 1976 is worth roughly $1,200,000 today. Unlike the federal election fund, which has grown automatically from $20 million in 1976 to $44 million in 1988, the presidential transition ceiling is not indexed to rise with inflation. Unless that ceiling is lifted, the Committee believes the next President-elect will have to raise private money to cover some of the costs of the transition.

The Committee made a concerted effort to determine whether the amount of public funding under the Presidential Transition Act needs to be increased. Based on testimony given before the Committee, the Committee concluded that the amount of funding must be raised. Not only has the $2,000,000 ceiling on public support been seriously eroded by inflation, according to testimony from Democratic National Committee chairman Paul Kirk on February 17, 1987, but the scope and complexity of activity required for an efficient transition has increased significantly over the years:

> On November 9 of this year, the President-elect will have to begin the process of selecting the most qualified individuals, for more than 3,000 executive appointments, including about 200 top-level positions. Under current budget procedures, he will have less than three months to prepare and submit his first budget for the entire federal government. That budget will reflect the President-elect's first major decisions about fiscal policy.
>
> The world's leaders will begin immediately to look to the President-elect to set the direction of foreign policy. The world's financial markets will immediately look to him to set the direction of his economic policies. There will be no time to lose.
>
> The Congress of 1963 believed it important to avoid, in the words of the Act's preamble, [a]ny disruption occasioned by the transfer of the executive power." Today, even in this time of budget austerity, the President-elect and his team should be given the resources to get the job done. After 12 years, it is time to increase the public funding for the transition.

Mr. Kirk's comments were echoed in testimony from Republican National Committee chairman Frank Fahrenkopf at the same hearing:

> Millions of dollars of both public and private funds are used in the process of choosing the President of the United States. Although this is a costly process, it is money well spent. Since we live in a large and trans-continental nation, large sums are required to enable the campaign process, the candidates, to reach out to the American public and discuss the issues of importance throughout our country. A comparison of the many millions properly spent in the process of choosing our new president and the rather modest sums used to facilitate the transition to power of the new administration argue for a prudent increase in public funding.

The Committee also made a determined attempt to estimate the amount needed to cover the legitimate costs of a presidential transition. Based on testimony from the GSA, which administers the funds during the transition, and from the GAO, which audits the expenditures after the transition is over, and after hearing from a range of experts on presidential transitions, the Committee concluded that it is time to adjust the public contribution to cover the bulk of the impact of inflation since 1976.

Using a standard price deflator covering 1976 to the present, Committee staff estimated that it would take approximately $4,000,000 today to cover the purchasing power of $2,000,000 in 1976. However, according to the following testimony from the Comptroller General of the United States on October 14, 1987, the true costs of the next presidential transition should include more than just inflation:

> Chairman GLENN. We have been spending a fair amount of time examining the level of public funding in advance of the 1988 transition. Given your past audit work on the public expenditures, do you think the current $2 million is adequate for the legitimate costs of the upcoming transition?
>
> Mr. BOWSHER. No, we do not, Mr. Chairman. We think it should be adjusted for inflation or for the cost-of-living factor here, and we also wonder if there should not be some additional money put in there, because our previous audits have indicated that not all the costs were covered. And also, some of the uses of some of the Government facilities were not actually billed to the transition. So we think even that factor ought to be considered. And when we get done having our economists adjust the $2 million and looking at our previous findings, we come out around the $5 million figure.

The Committee considered a number of estimates in drafting S. 2037. Given the pressing need to reduce the federal budget deficit, the Committee concluded that a full inflation adjustment in presidential transition funding was not possible. Presidents-elect must share in the budgetary sacrifice, too. Thus, under S. 2037, the public allotment under the Presidential Transition Act would rise from $2,00,000 to $3,500,000 for 1988, or roughly half the Comptroller General's suggested level.

In addition under this bill, future transitions are covered by an automatic inflator designed to cover future cost increases in presidential transition expenses. The inflator will not apply until the first transition following the 1988–89 transition, and is to be based on the actual cost increases in presidential transition expenses such as office space, transportation, salaries, and per diem, rather than a standard Consumer Price Index (CPI). The Committee felt that such an inflator would better measure true cost increases than the CPI. The Committee also believes that GSA will be able to calculate actual costs through its own records of cost increases in other GSA-administered programs.

The public allotment for the outgoing President is not directly affected by this bill. Hearings by the Subcommittee on Federal Spending, Budget, and Accounting of the Governmental Affairs Committee on March 3, 1988, indicated that the outgoing President is already well supported under the Former Presidents Act of 1958. Under S. 2037, however, the allotment for the outgoing President will be adjusted by the same inflator used for adjusting the allotment for the incoming President.

In addressing the funding issue, the Committee also recognized the near-unanimous agreement among past transition officials that a President-elect must undertake at least some advance planning during the general election campaign. A President-elect cannot wait until the morning after the election to start planning for the transition. In order for the President-elect to "hit-the-ground-running," the candidate must lay the administrative groundwork before the campaign is over. According to testimony on September 17, 1987, from representatives of the Harvard University Public/Private Careers Project, which has drawn together the thoughts of several hundred past and present government officials who have participated in past transitions, pre-election transition planning may now be essential for ensuring post-election success:

> We think it is very important that transition planning begin in the summer and not await the outcome of the general election, for experience has shown that the job of finding highly qualified people to serve in top positions in the executive branch requires more time than the mere ten weeks that fall between election day and Inauguration. Experience has also shown that presidential candidates are reluctant to spend precious campaign funds on transition planning; and they worry as well about appearing presumptious in beginning to plan for an administration before they are elected. It is a good idea, therefore, to make transition funds, not campaign funds, available to both major party nominees for transition planning. That will encourage an earlier start to transition planning and will remove practical and political objections to pre-election planning.

Pre-election transition planning was also supported by representatives of the National Academy of Public Administration, the chairmen of the Democratic and Republican national committees, and representatives of the Center for Excellence in Government in

Washington, D.C., and the Harvard University Public/Private Careers Project in Cambridge, Massachusetts.

It is important to note that such pre-election planning is by nature ministerial, not political. Someone must design a personnel process capable of identifying and recruiting 3,000 presidential appointees. Someone must make initial contact with the GSA about office space, telecommunications, and financial management. Someone must structure the transition's operating and management plan. These choices may appear routine, but they need to be made nonetheless.

According to testimony received on October 14, 1987, from Ray Kline, former Acting Administrator of the General Services Administration during the 1980–81 presidential transition, "There is certainly a need for more pre-planning to get a lot of things laid out in advance so that the day after the election people are hitting the ground running and not beginning to address these issues in whole cloth."

According to Mr. Kline, pre-election planning might address the following concerns, among others:

identifying the key people who will staff the transition;

briefing transition staff on legal and operational concerns;

initiating preparatory bureaucratic work such as filling out clearance forms;

designing and selecting suitable office space for immediate occupancy following the general election.

The Committee believes that such pre-election transition planning is a legitimate cost of a presidential transition, and that it constitutes a wise investment in future presidential effectiveness. Therefore, the Committee concluded that such planning ought to be covered at least in part by public funds. Though several witnesses suggested that the presidential candidates might be well advised to use a portion of their public campaign funds, current federal election regulations prohibit such usage. In response to a request from the Committee for additional information on Federal Election Commission (FEC) regulations, Special Assistant to the Comptroller General of the United States, Milton Socolar, wrote the Committee on October 15, 1987, that:

> . . . it appears that, under current law and regulations, the FEC would find that federal campaign funds—as opposed to segregated private donations—are not available for transition funding during a campaign. Furthermore, we are aware of no FEC reporting or disclosure requirements applicable to private transition funds.

Thus, if a presidential candidate wishes to finance a transition planning effort during the general election campaign, he or she has no choice but to raise private funds. Moreover, those funds will not be subject to the same strict reporting requirements now governing private contributions to the presidential campaign, a loophole in federal election finance regulation which is addressed in S. 2037 and discussed later in this section.

After examining past transition planning efforts by candidates Jimmy Carter and Ronald Reagan, the Committee concluded that a relatively small amount of pre-election public funding would be

adequate and proper, and, if carefully reported and audited, would relieve the candidates from having to raise private cash for transition planning.

Under S. 2037, therefore, the major national party committees, or their designees, may request reimbursement of up to $200,000 in qualified transition planning expenses occurring in a period between the respective nominating convention and the general election. In testimony before the Committee on February 17, 1988, the respective chairman of the Republican and Democratic national committees offered their opinions of the appropriate amount of pre-election support needed for transition planning:

> Chairman GLENN. Is $200,000 enough to do the right job on transition planning?
>
> Mr. FAHRENKOPF. Again, this election cycle, if the bill passes, will be a test of that. My own view is it probably is, because as I indicated in my opening statement, we already have the infrastructure in place by way of computers, by way of clerical staff, by way of accountants and so forth, so that it is not so much a question of having to go out and acquire some of the hardware and things that would be required. Again, I guess the proof is in the pudding and we will have to look at it, if the legislation passes, after this transition.
>
> Mr. KIRK. I have no real difference of opinion on that, Senator. I think, particularly the first time out now, the largest component may well be some thoughtful staffing and personnel planning, rather than major acquisitions. If I am wrong on that . . . this will be a good yardstick and hopefully we can make whatever corrective changes are necessary.

It is the Committee's intent that such reimbursement only be given to those parties whose candidates have a reasonable chance of benefiting from the planning activity. Under S. 2037, only those national parties whose presidential candidate received 25 percent of the popular vote in the previous presidential election can qualify for transition planning reimbursement. For 1988, that means the Democratic and Republican national committees or their designees. If another party were to garner the minimum 25 percent in the 1988 election, it would qualify for funds in 1992.

Under S. 2037, the GSA will be responsible for approving all reimbursements for pre-election transition planning. The Committee also intends that there be a full audit of such reimbursements by the General Accounting Office.

The Committee concluded that the national parties are the logical place for pre-election transition planning activity. According to testimony from the chairmen of the Democratic and Republican National committees, as well as from several prominent individuals involved in past transition planning on behalf of presidential candidates, transition planning by the national party committees would both strengthen the governance process and create a longer-term institutional memory on transition operations and management. According the Sheldon Cohen, past General Counsel to the Demo-

cratic National Committee and past campaign advisor to several Democratic presidential candidates:

> Over the past several years, I have concluded that a new President must "come out of the gate" running at full steam if his or her Presidency is to be effective. In fact, I think that each of the Presidential candidates ought to begin some preliminary transition planning now. . . . The provision of reimbursable funding to the national parties will encourage the start of such planning.
>
> I am very comfortable with having the national parties handle the pre-election transition funding. Such a provision is both highly appropriate and will serve to strengthen the role of the parties in the transition process. It is also important to note that the more prominent the individuals associated with transition activities on behalf of the party and the candidate, the more certain it will be that their efforts [will] be utilized by the new President.

It is important to note that S. 2037 does not create a cash grant to the national parties or their designees. Rather, it provides only for reimbursement, subject to the approval of the Administrator of General Services. Such a reimbursement mechanism will guard against the use of any pre-election transition funds for electioneering. The Committee believes that the General Services Administration is capable of distinguishing between transition planning and campaigning. Under S. 2037, the Administrator of GSA has the authority to deny reimbursement for any questionable planning expenses. The Committee has great confidence that GSA will be able to closely regulate these reimbursements, and took note of the testimony of former Acting Administrator Ray Kline on October 14, 1987, regarding the system used in 1980–81:

> I have got to tell you that—and I think the record will demonstrate—that in terms of those dollars that flow from appropriation from the Congress, we have run a very tough system of accounting for those funds, a very tough system that [GSA Comptroller Raymond] Fontaine was in charge of. We took absolute care to make sure there was no co-mingling between what came through from the Congress versus the funding that may have been provided from private sources.
>
> We knew like night follows day that this entire business was going to be audited, perhaps a number of times, immediately after the election was run and we were not about to be caught with our pants down at that time. We were very rigorous in the way that that was handled and . . . how we dealt with requests from certain people for certain things, like larger cars . . . we turned them down, that is literally the way the world was run.

The Committee expects that the same tough standards that have applied to post-election expenditures in the past will be applied to both pre-election planning reimbursement and post-election expenditures in the future.

It is also important to note that S. 2037 allows a national party committee to designate its major party candidate as the agent of the committee for transition planning. Since the national party committee chairpersons generally work for the major party candidate, it is also clear that the candidate can exercise considerable influence over how the party committee conducts the transition planning.

PUBLIC DISCLOSURE OF TRANSITION CONTRIBUTIONS

The second issue this legislation addresses is the need to regulate private money contributions for pre-election and post-election transition activities, and the need for public disclosure of basic information on the President-elect's transition team.

After its own study of past transition records, the Committee concluded that private money has grown increasingly important to presidential transitions. Presidents Nixon, Carter, and Reagan all raised private funds for their transitions. According to Nixon aides interviewed by the Committee staff, President-elect Nixon raised $1 million in private funds to supplement the $450,000 already available under the 1963 Presidential Transition Act. According to Carter aides also interviewed by the Committee staff, President-elect Carter raised $150,000 for his pre-election transition planning, but spent only $1.7 million of the $2 million in public funds available under the Presidential Transition Act. According to Internal Revenue Service documents and Federal Election Commission reports, President-elect Reagan raised approximately $1.25 million for both his pre-election and post-election transition activities in 1980. None of the sources or expenditures associated with the private cash were ever disclosed to the public, creating the potential for hidden conflicts of interest.

The Committtee noted with concern the complete absence of regulations covering private funding for presidential transitions, whether during the pre-election period or following the general election. Whereas the Federal Election Campaign Act regulations require a close accounting of every penny of private contributions for election activity, there is no regulation requiring even the slightest disclosure on private money for transition activity. Such accounting is impossible given the fact that private transition money is neither disclosed nor accounted for in either the pre- or post-election period. As long as the cash is given for the transition, the FEC does not ask for records. The Committee believes this loophole in the federal campaign financing regulations should be closed.

The potential problems with the current scheme are clear. The lack of disclosure in the pre-election period undermines the efficacy of the Federal election rules, providing a loophole for money that might otherwise have to be disclosed in the campaign. The absence of disclosure in the post-election period creates the appearance of potential conflicts of interest during a very sensitive period in the policymaking and personnel process. According to testimony on September 17, 1987, from Rep. Dante Fascell, the original sponsor of the Presidential Transition Act of 1963:

> I am concerned about the dollar amounts of private funds that have once again found their way into the transition process. This particular point is even more keenly felt today when enormous sums of money are raised and spent on elections in such a routine manner. We are again faced with, at least, the appearance of a President-elect asking for money for a legitimate government function and, even worse, the possible misinterpretation of the donation of large sums of money from individuals for transition functions, if such individuals later serve in the Administration. Additionally, if you have a large number of nonpaid volunteers taking part in the transition, you have no control. Such volunteers, no matter how well meaning, are not subject to the same ethical constraints that those individuals on the federal payroll are [subject to].

All expert testimony heard by the Committee favored the reporting on any private cash contributed for either pre-election transition planning or post-election transition operations. At a minimum, therefore, the Committee decided to require disclosure of the sources, amounts, and expenditures associated with all private money contributions for both pre-election transition planning and the post-election transition itself.

Such disclosure is only possible through use of a *quid pro quo* arrangement in which the national party committees and the President-elect agree to disclose private cash contributions in return for the public funds available under the Presidential Transition Effectiveness Act. Under S. 2037, in return for the reimbursement provided for pre-election transition planning, the national party committees or their designees would be required to make such a disclosure within 90 days after the election. It is particularly important to note that, while the Committee supports pre-election transition planning for its value to an effective post-election transition, it also constitutes the only available mechanism for requiring disclosure of private cash during the pre-election period. Finally, according to past transitional personnel, such reporting would not impose an onerous burden on transition finance officers. Much of the information is already recorded, albeit not disclosed.

Similarly, in return for the $3,500,000 in public transition support, the President-elect would be required to make such a disclosure within 90 days after the inauguration. In general, these records are already kept—albeit in an undisclosed fashion—and should be relatively easy to assemble for meeting this reporting requirement. Thus, the Committee believes that the disclosure requirements do not constitute an unacceptable burden on either the national party committees or the President-elect.

The need for public disclosure also applies to those individuals who join the President-elect's transition teams. As the number of people who participate in the transition has increased, so has the confusion within federal agencies. In 1980–81, for example, there were almost 1,000 people involved with the Reagan transition teams. Without some disclosure of who was and was not a member of each team, and without an indication of where each member came from and who was paying the way, agency officials were con-

fused about potential conflicts of interest and were thereby unable to provide the kind of quick response so necessary for preparing the President-elect for office.

Such confusion is easy to remedy without imposing an undue burden on the President-elect. Under S. 2037, the President-elect, again in return for the public transition allotment, will be required to provide a list of all transition personnel, whether full-time or part-time. Such a list is to include the name of every person working on the transition, his or her most recent employment, and the specific source or sources of funding supporting his or her transition activities, whether from a public or private source, or from personal funds.

The purpose of the list is to make clear who is working on the transition, where they came from, and who is providing the source of support. If, for example, an individual provides services on voluntary basis to the transition, the list should state the source of funds as personal. If, however, that individual is actually receiving a full-time salary from a public or private source, but is spending a portion of his or her working time on the transition, the list should specify that the source of funds is, in fact, the public or private source. If, for another example, an individual is supported by a private gift or grant provided to support his or her work on the transition, the list should state the specific source of the gift or grant.

It is the Committee's intent that the list include all persons who are employed on the transition, full-time or part-time, or who make a significant voluntary contribution to the transition. This list is to be disclosed to the Administrator of General Services on a monthly basis, and on the thirtieth day following the inauguration, and is to be made public by the Administrator upon receipt.

Though such a list should make individuals who join the transition more sensitive to potential conflicts of interest, the Committee notes the importance of a strong signal from the President-elect and his or her top staff regarding proper and ethical conduct of transition personnel. As Ray Kline, President of the National Academy of Public Administration, testified on October 14, 1987:

> I think there has got to be a Federal set of Ten Commandments, a code of conduct that applies to people coming to town. It is amazing how many people beyond the beltway think that us careerists live fat, dumb and happy in town here, that we take Government cars to drive from home to work, that we do have our own limousines, that we all fly first-class, things of that nature.
>
> They bring those attitudes in, and they are not at all bashful about stating their requirements. At a practical level, some of the biggest issues early on are dealing with people who walk with a swagger as to what they think they are entitled to, people who may vanish within a week . . . They have just won an election. The name dropping is rather awesome. And I think that a lot of that could be headed off at the pass if as people join the transition team they are handed a card with the Ten Commandments on it, like, you do not travel first-class in the air, like you do not take your Government car on a regular basis from

> home to work. And I think there is a whole range of things that deal with travel, transportation, promising jobs to people, the personnel systems of the Government, moving out unilaterally, and . . . hiring firms to do work for them in violation of Government procurement process, things of that nature.

ADDITIONAL CHANGES

This bill also contains several other changes in the Presidential Transition Act. The bill allows the Administrator of General Services to obligate funds for the outgoing President beginning thirty days prior to the inauguration of the incoming President. Currently, the General Services Administration may not obligate funds for the outgoing President until the inauguration of the new President. The bill also allows the incoming administration 30 days past the inauguration to wind down the transition. Currently, the accounts are closed the moment the President-elect is sworn in. These accounting changes incorporate the recommendations made by the Comptroller of the General Services Administration and by the General Accounting Office.

The bill also clarifies the coverage of federal moving expenses for presidential appointees to allow those appointees who move to their duty station during the transition similar treatment to those appointees who move only after the inauguration.

The legislation also acts on a recommendation by the General Accounting Office to amend the Vacancies Act of 1868. That Act provides that a President can only fill a federal agency vacancy caused by death or resignation temporarily for 30 days, a deadline which is routinely missed or ignored, in part because 30 days does not appear to be enough time to recruit and nominate a presidential appointee, and in part because of an erroneous historical interpretation of the Act and its application.

In fact, various versions of the Vacancies Act have existed since the first Congress. On the urging of President Abraham Lincoln, for example, the 37th Congress passed an earlier version of the Vacancies Act on February 20, 1863, which specified a six month maximum term for temporary appointments.

Thus, contrary to an opinion of the General Counsel of Health and Human Services dated November 27, 1985 that the 1868 Act's "shallow purpose [was] to limit the authority of President Andrew Johnson," the clear purpose of the original Vacancies Act was to ensure that executive vacancies are promptly filled. Indeed, the Committee notes the original intent of the Act as stated by Rep. Trumbull is still relevant for establishing the meaning of the statute:

> Mr. TRUMBULL. "The intention of the bill was to limit the time within which the President might supply a vacancy temporarily in the case of the death or resignation of the head of any of the Departments or of any officer appointed by him and with the advice and consent of the Senate in any of the Departments. As the law now stands, he is authorized to supply those vacancies for six months without submitting the name of a person for that purpose

> to the Senate; and it was thought by the committee to be an unreasonable length of time, and hence they have limited it by this bill to thirty days." (39 Congressional Globe 1163, February 14, 1868)

These comments draw two basic points regarding the Vacancies Act: (1) that the Vacancies Act existed in some form before 1868, and (2) that the Congress intended that the Act place some limitations on the President's ability to have vacancies filled temporarily for long periods of time. Congress has had ample opportunity to repeal the Vacancies Act, but has not chosen to do so. Since the Act was last amended in 1891, it has remained on the statute books without any effort made to repeal it. Nevertheless, several agencies, including the Departments of Energy and Health and Human Services, have argued that the Act does not govern vacancies in positions governed by their basic authorizing statutes.

Given these competing views, it is time to decide whether to keep this statute, and, if so, how to make it relevant to the modern presidential appointments process. Under S. 2037, the Committee expresses its desire to revitalize the Vacancies Act by amending it to allow the President 120 days to fill vacancies temporarily unless a nomination to fill the vacancy has been submitted to the Senate, and by applying the Act to all executive agencies.

The Committee also believes that the present language, however old, makes clear that the Vacancies Act is the exclusive authority for the temporary appointment, designation, or assignment of one officer to perform the duties of another whose appointment requires Senate confirmation. The exclusive authority of the Vacancies Act would only be overcome by specific statutory language providing some other means for filling vacancies. As such, the Committee expressly rejects the rationale and conclusions of other interpretations of the meaning and history of the Vacancies Act, including the opinion of the General Counsel of Health and Human Services cited above. The Committee specifically accepts the rationale and conclusions of the Comptroller General's decision B–220522, June 9, 1986, 65 Comp. Gen. 626 (1986) as consistent with the meaning of the Vacancies Act.

III. Legislative History

The Presidential Transitions Effectiveness Act was introduced as S. 2037 in the Senate in the 100th Congress by Senators John Glenn, Ted Stevens, and Lawton Chiles. Hearings were held at the Governmental Affairs Committee on September 17 and October 14, 1987, and February 17, 1988. The following witnesses provided testimony:

—Representative Dante Fascell, State of Florida
—William Timmons, Timmons & Company, former deputy director, Reagan transition
—Harrison Wellford, Wellford, Wegman, Krulwich, Gold, & Hoff, Carter executive branch transition coordinator, former Deputy Director, Office of Management and Budget
—Paul O'Neill, chairman and chief executive officer, ALCOA, former Deputy Director, Office of Management and Budget

—Carl Brauer, director, Harvard University Public/Private Careers Project
—Winthrop Knowlton, director, Harvard University Center for Business and Government
—Stuart Eizenstat, Powell, Goldstein, Frazer & Murphy, former Director, Domestic Policy Staff, Carter Administration
—Ed Harper, vice president and chief financial officer, Campbell Soup Company, former Deputy Director, Office of Management and Budget
—Stephen Hess, senior fellow, Brookings Institution
—Charles A. Bowsher, Comptroller General of the United States
—Raymond A. Fontaine, Comptroller, General Services Administration
—J. Jackson Walter, president, National Trust for Historic Preservation, former Director, Office of Government Ethics
—Ray Kline, president, National Academy of Public Administration, former Acting Administrator, General Services Administration
—Elliot Richardson, Milbank, Tweed, Hadley & McCloy, former Secretary, Department of State
—Benjamin Read, chairman, National Academy of Public Administration Panel on U.S.-Soviet Communications, former Executive Secretary, Department of State
—Paul Kirk, Chairman, Democratic National Committee
—Frank Fahrenkopf, Chairman, Republican National Committee
—James Miller, Director, Office of Management and Budget
—Sheldon Cohen, Morgan, Lewis, & Bockus, former Commissioner, Internal Revenue Service, former General Counsel, Democratic National Committee
—Mark Abramson, executive director, Center for Excellence in Government

All of the witnesses but one supported both an increase in the public allotment for the post-election transition, and addition of an inflator to cover future effects of inflation. The one opponent favored a shortening of the presidential transition.

All witnesses supported disclosure of private cash contributions. In drafting the disclosure requirements, the Committee was particularly aware of Senator Stevens' concern that the legislation not unduly burden the President-elect. That concern is reflected in the final legislation.

All witnesses also supported the concept of pre-election planning by the national party committees and/or the presidential candidates, both for its value for improving post-election effectiveness and as a mechanism for securing disclosure of private cash contributions given for such planning in the general election campaign. However, Office of Management and Budget Director, James Miller argued that such planning costs were not a legitimate cost of government. Mr. Miller focused on two concerns. First, as he testified on February 17, 1988, "there is the problem, essentially, of choosing. I just have this notion, even if there is a very minor party, that minor party candidates should have an equal footing with major party candidates."

The Committee considered the issue of providing pre-election support to third parties, and concluded that only those parties with

a reasonable chance of success should receive public funds, thereby rejecting the funding of third parties unless they pass the threshold test of 25 percent popular vote in the previous presidential election.

Second, as Mr. Miller also testified, "you are paying $2 for every $1; that is to say that if you have pre-election transition expenses, arguably both major parties are going to do it but only one transition is going to be useful." In short, because one party will lose, funds spent on that party are wasted.

The Committee considered other approaches for encouraging pre-election planning, and concluded that a small amount of public funding provided the greatest incentive. Also, given a choice between allowing use of Federal Election Campaign Act public campaign funds for planning purposes versus establishing a new reimbursement device under the Presidential Transitions Act, the Committee concluded that a reimbursement device provided the tightest control over the expenditure of public funds. Funds provided under the Presidential Transitions Act will be administered by the GSA under its substantial knowledge of transition operations and costs, while funds provided under the Federal Election Campaign Act would be administered by the Federal Election Commission with its lack of experience in transition activities.

Moreover, it is the Committee's belief that funds used in a losing planning effort will not be entirely wasted, that the experience of each transition effort will create a longer-term institutional memory in the national party committees which will be useful to future transitions, and that lessons learned in the losing party's planning effort would not be completely unavailable to the winner. There is nothing in this legislation which prohibits the national party committees from working together on elements of pre-election transition planning nor from sharing information gathered in the process.

Several witnesses raised the issue of the need for disclosure of in-kind contributions of time, administrative services, transportation, etc., to the presidential transition. Though the Committee noted the extensive election regulations which currently govern in-kind contributions to a presidential campaign, it had no evidence that in-kind contributions have or will become a problem in presidential transitions. Further, the Committee again took note of Senator Stevens' concern that the transition not be unduly burdened with regulation.

Nevertheless, the Committee is concerned lest in-kind contributions of transportation, hotel, office space, and other administrative services become the preferred channel for making undisclosed contributions. Therefore, as part of the Committee's amendment in the nature of a substitute to S. 2037 adopted at a mark-up on April 14, 1988, by a voice vote, the Committee adopted a provision requiring the national party committees and the president-elect, in return for funding provided under the Act, and for the 1988-89 transition only, to provide an estimate to the Administrator of General Services of the aggregate value of in-kind contributions in four areas: (1) transportation, (2), hotel and other accommodations, (3) suitable office space, and (4) furniture, furnishings, office machines and

equipment, and office supplies. These estimates will allow the Committee to evaluate the possible need for future revisions of the Act.

The Committee held a mark-up on April 14, 1988, and, by voice vote, approved an amendment in the nature of a substitute to S. 2037. The substitute contained technical changes and clarifications in S. 2037, as well as the amendment regarding in-kind contributions. Following adoption of the substitute, the Committee adopted S. 2037 by recorded vote, thereby approving discharge of the bill to the Senate. The record vote was as follows:

Final passage: ordered reported, 9 yeas, 0 nays.

YEAS—9	NAYS—0
Nunn	
Levin	
Sasser	
Pryor	
Mitchell	
Stevens	
Rudman	
Heinz	
Glenn	
Bingaman [1]	
Roth [1]	
Cohen [1]	
Trible [1]	

[1] By proxy. By Committee rules, proxy votes are counted for recording purposes only on final passage.

IV. Additional Issues

The Committee also examined three other issues related to the improvement of presidential transitions. Though the Committee decided not to legislate in these areas, it takes note of the following concerns.

First, because of the role of the budget in structuring the national agenda, it is critical that the incoming and outgoing administrations cooperate to ensure that the incoming administration has access to the expertise and information needed for drafting an alternative to the outgoing administration's budget in a timely fashion. As Chairman Glenn said at the Committee's February 17, 1988, hearing:

> The problem is that the outgoing President is required to submit a budget regardless of whether it is going to be dead on arrival. It is just waste paper coming over because the new Administration coming in is not bound to that presentation.

The Committee examined several proposals to address this concern, including a change in the budget timetable following a presidential transition, and a requirement that the outgoing President only submit a current services budget to the Congress. Both proposals would give the new President an opportunity to shape the budget accordingly. In evaluating these proposals, the Committee took note of Budget Director Miller's testimony on February 17,

1988, regarding the milestones and operation of the current budget process:

> [T]he budget process for generating the coming year's fiscal budget really begins way before the election. It begins even during the summer when guidelines are given and so forth. So the budget preparation part I think should not be truncated and await a new President.
>
> I think, frankly, to start a new budget after a new President comes into office would be impossible because it would take several months and it would eat up an enormous amount of time of the new President and it would be inefficiently done, especially because at the beginning of an Administration you would not have the senior political appointees in place at the various agencies. * * *
>
> I would, I guess, be reluctant to deny an outgoing President the opportunity to make a statement about what he or she might recommend in terms of the budget priorities of the Nation. I do not think that the last little spin, that is, of making their own proposal, would in any way hamper the new President in coming in and it might give a basing point for discussion of whatever changes the new President might wish to propose.
>
> Again, from experience, I think anything the outgoing Administration can do, the OMB under the leadership of the outgoing political appointees might do to enable the new President to facilitate his or her stamp on the budget ought to be accomplished.
>
> I think permission, essentially, for the new incoming President's political choices to be involved in a very free and open way with the political appointees of the outgoing Administration would be very helpful.

Given this Administration's commitment to such cooperation, and the lack of available studies on the impact of the proposed changes, the Committee decided not to proceed with further action. It is the sense of the Committee that the outgoing and incoming administrations, whether of the same party or not, should work together to ensure that the budget is a meaningful document for congressional consideration, and that the outgoing administration should make every effort possible to provide access and information to the incoming so that the new President's team is as fully prepared to act on the budget as soon as possible following inauguration.

Second, because of the role of presidential appointees in executing a new President's agenda, the Committee examined ways of improving the recruitment of talented individuals for public service. Several components of S. 2037 reflect this concern, including the provision of limited pre-election planning funds to establish a personnel process in advance of the transition. The Committee heard repeated testimony regarding the increasing difficulties of recruiting and retaining the very best leadership this nation has to offer. The Committee considered several remedies, including a reduction in the number of appointments a new President must make. As J.

Jackson Walter, former Director of the Office of Government Ethics, testified on October 14, 1987:

> [If] the business of recruiting presidential appointees is becoming tougher and tougher for all kinds of reasons—and there are all sorts of reasons that make it hard—then it seems to me that it is not real sensible to increase the number of positions that you have to recruit.
>
> That just makes a hard job even more difficult and I would think that instead we might want to go back and review some of the Senate-confirmed presidential appointee positions and perhaps allow ranking SES career members to continue to fill them in a professional basis.

Such a review was beyond the scope of this legislation, however, and was left for future reconsideration.

The Committee also received testimony regarding the impact of ethics regulation on the recruitment of transition personnel. It is the Committee's intent not to unduly burden transition personnel with needless public disclosure. However, the Committee also notes the need to have at least minimal public knowledge of potential conflicts of interest among transition personnel. In seeking a balance between these twin goals of minimal burden and public disclosure, the Committee notes the willingness of the Administrative Conference of the United States to study these issues in advance of the 1988–89 transition. According to a March 29, 1988, letter from the chairman of the Administrative Conference, Marshall Breger,

> What remains to be studied is the application of current conflict-of-interest restrictions to transition personnel. Obviously, we should seek requirements that are appropriate to such activities—not so harsh as to chill participation in these necessary efforts or so loose as to allow untoward conduct. I believe such a study should be done before the election and that the Conference is well-positioned to undertake it should the Committee or the General Services Administration so desire.

The Committee also examined a proposal to require the White House Personnel Office to provide to the national party committees or their designees a detailed list of position descriptions for top appointee positions. Such a list might form the grist for pre-election personnel planning, and might improve the selection of qualified individuals for key posts. Because the White House Personnel Office indicated its willingness to provide such a list if so directed by the President, the Committee decided not to act on a formal legislative requirement. The Committee encourages the President to direct the White House Personnel Office to release any information that might prove helpful in both the pre-election planning effort and the post-election transition.

Third, the Committee examined the issue of institutional memory in government. Several witnesses, including Stuart Eizenstat, Benjamin Read, and Elliot Richardson, expressed their concerns regarding the lack of continuity across administrations. As Eizenstat testified on September 17, 1987:

> One major disability during transitions is the absence of access by the incoming Administration to records, documents and key papers in the Executive Branch bureaucracy. * * * Even more troubling is the absence of documents at the White House from the outgoing Administration, to which reference could be made on important decisions. It is crucial to assure continuity in record-keeping. For example, it is nearly impossible to envision a new corporate CEO confronting the same situation [which] each new President faces—assuming the top position in his company with no available records of his predecessor's decisions and no background on those decisions; the offices he and his new team enter are empty of past memos and files on major events—records which had been there the day before. Yet this is the situation faced by a new President and Vice President as they enter the White House. The former President has taken all of his papers to his Library—every note and every memo. None are maintained or are readily accessible for his successor. A structure such as this makes it virtually impossible from the onset to instill institutional memory and to make transitions effective.

Because of the seriousness of this testimony, and other testimony which drew the same conclusion, the Committee undertook an investigation of the status of presidential records during a transition. Based upon staff discussions with representatives of the National Security Council (NSC), the White House Office of Administration, and the National Archives and Records Administration (NARA), the Committee concluded that legislation was not necessary at this time. In a March 15, 1988, letter, the Archivist of the United States assured the Committee that the National Archives and Records Administration will work to make sure a new President has adequate information from the previous administration, and outlined a program for strengthening continuity between administrations. In the letter, NARA agreed to:

—Provide briefings, training, and advice to assure that current White House staff members are informed of their responsibility to create an adequate record of their activities.

—Educate and advise current White House staff members in records management and the requirements of the Presidential Records Act.

—Maintain a current knowledge of all White House records systems, including automated systems.

—Trace and document continuity of functions during the administration by recording changes in staff structure and personnel. Correlate these changes with records. Develop overall organizational history of the administration.

—Conduct exit interviews with departing staff members to identify involvement in specific functions and issues. The accumulated interviews will comprise a roster of experts for the possible use of subsequent administrations.

—Work with outgoing administrations to identify bodies of active records to which incoming administrations may need ready reference.
—Provide outgoing administrations with clear guidance reiterating which records must remain in government custody. This guidance is also provided to executive departments with respect to federal records.
—Brief incoming White House staff members on the availability and means of access to information from the previous administration.

The National Security Council's executive secretary also assured the Committee staff that the NSC's new system of maintaining a duplicate set of sensitive materials in White House files will be in place and functional in time for the next transition. The Committee will follow the implementation of these assurances closely.

V. Section-by-Section Analysis

Section 1 designates the Act the "Presidential Transitions Effectiveness Act of 1988."

Section 2 provides the central findings of the Committee regarding the need for amendments to the Presidential Transition Act of 1963 (3 U.S.C. 102 note).

Section 3 provides the central purposes of the amendments.

Section 4 amends Section 5 of the Presidential Transition Act of 1963 by redesignating the section as section 9, and by changing the amount authorized to be appropriated to the Administrator of General Services for providing services and facilities to the President-elect from not more than $2,000,000 to not more than $3,500,000. Section 4 also adds a new subsection to provide that not more than $200,000 be appropriated for the purposes of reimbursement of pre-election planning by a national party committee as that term is later defined in the bill. This bill does not make any change in the $1,000,000 available to the outgoing President, except that all funding under this Section will be increased by an inflation adjusted amount based on an estimate by th Administrator of General Services of the true cost increases which occur in the years following the most recent presidential transition.

Section 5 amends the Presidential Transition Act of 1963 by adding four new sections following the old Section 4. The bill adds a new Section 5 to authorize the Administrator of General Services to reimburse pre-election transition planning expenses incurred by each national party committee of a major party candidate for President. The Section also defines the following terms: "major party candidate," meaning a presidential candidate that received 25 percent or more of the total popular vote in the preceding presidential election; "national party committee," meaning the committee organization of a political party of a major party candidate; and "transition planning," meaning the development of a personnel process for presidential appointments, establishment of a transition organization and operating plan, the identification of potential transition personnel, and liaison with the GSA and other relevant federal departments and agencies.

Section 5 also adds a new Section 6 to define the transition expenses which qualify as reimbursable, including suitable office space, compensation of personnel, and the procurement of services of experts or consultants. Only those expenses defined in the Section qualify for reimbursement by the Administrator of General Services. The Section gives the Administrator the authority to determine the amount of reimbursement necessary to carry out transition planning, and provides that only expenses that occur no earlier than 14 days following the end of the nominating convention of the applicable political party and no later than one day following the general election will be subject to reimbursement. Finally, the Section provides that a national party committee may designate the major party candidate as the agent for transition planning and reimbursement.

Section 5 also adds a new Section 7(a) to require disclosure of private transition planning funds provided in the post-convention/pre-election period. The Section requires the national party committees or their designees, as a condition for receiving funds available in sections 5 and 6 above, disclose to the Administrator of General Services the date of contribution, source, amount, and expenditure of all private money received for purposes of transition planning. The disclosure required under this section is dependent upon passage of sections 5 and 6, which establish authority to reimburse pre-election planning. The Section requires the disclosure to be made in the form of a report to the Administrator with 90 days of the general election, and requires that the report be made public upon receipt.

Section 5 also adds a new Section 7(b) to require disclosure of private transition funds received during the post-election period. The Section requires the President-elect and Vice President-elect, as a condition for receiving funds available in new section 9(a)(1) above, to disclose to the Administrator of General Services the date of contribution, source, amount, and expenditure of all private money received either before or after the general election for use in the preparation of the President-elect or Vice president-elect for assumption of official duties. The Section requires the disclosure to be made in the form of a report to the Administrator within 90 days of the inauguration, and requires that the report be made public upon receipt.

Finally, Section 5 adds a new Section 8 to require the President-elect and Vice President-elect, again as a condition for receiving funds available in new section 9(a)(1) above, to disclose to the Administrator of General Services a list of all transition personnel (full-time or part-time) and their most recent employment and source of funding which support the transition activities of such personnel. The Section requires the disclosure to be made in the form of 3 reports within thirty, sixty, and ninety days after the general election, and to be made public upon receipt.

Section 6(a) amends section 3(a)(4) of the Presidential Transition Act of 1963 to provide for proper accounting of collections received from the Secret Service, press, or others occupying space on chartered aircraft.

Section 6(b) further amends section 3(b) of the Presidential Transition Act of 1963 to allow the Administrator of General Services to

reimburse obligations incurred by the President-elect or Vice President-elect during a period of thirty days following the inauguration, thereby providing certain accounting flexibilities recommended by the GSA.

Section 6(b) also amends section 4 of the Presidential Transition Act of 1963 to allow the Administrator of General Services to obligate funds for the outgoing President and Vice President during a period beginning 30 days before the expiration of their terms of office, also thereby providing certain accounting flexibilities recommended by the GSA.

Section 7(a) provides that the national party committees or their designees, as a condition for receiving funds under new sections 5 and 6 above, shall provide an estimate to the Administrator of General Services of the aggregate value of all in-kind contributions made before November 8, 1988, which were received for the purposes of transition planning in the following areas: transportation, hotel and other accommodations, suitable office space, and furniture, furnishings, office machines, and office supplies. The effect of the section is to require this estimate only for the 1988–89 transition. The section requires that the estimate be made to the Administrator of General Services within 90 days after November 8, 1988 and made public upon receipt.

Section 7(b) provides that the President-elect and Vice President-elect, as a condition for receiving funds under section 9(a)(1), shall provide an estimate to the Administrator of General Services of the aggregate value of all in-kind contributions made before January 20, 1989, which were received for transition services and facilities in the following areas: transportation, hotel and other accommodations, suitable office space, and furniture, furnishings, office machines, and office supplies. The effect of the section is to require this estimate only for the 1988–89 transition. The section requires that the estimate be made to the Administrator within 90 days after January 20, 1989, and made public upon receipt.

Section 8 provides that the inflation adjustment under section 9(c) of the Presidential Transition Act of 1963 as amended does not apply for fiscal year 1989.

Section 9 amends section 5723 of title 5, United States Code, which provides for reimbursement of certain moving expenses of presidential appointees, to clarify that a person engaged in transition activities in Washington, D.C., who is subsequently appointed to a position in a new administration be entitled to the same moving expenses, if any, that he or she would have received had he or she not served in the transition first.

Section 10 amends section 3345 of title 5, United States Code, by striking out "Executive Department" and replacing it with "Executive agency." This change has the effect of applying the Vacancies Act of 1868 to all executive agencies. The Section also changes the amount of time a vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of the title from 30 days to 120 days, unless a nomination has been submitted to the Senate, in which case the person nominated may serve until the Senate confirms the nomination or for no more than 30 days after the date that the Senate rejects the nomination. If the person is nominated when the Congress has adjourned *sine die* or at the end

of a session, the person may serve for no more than 120 days after the Congress next reconvenes.

VI. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill."

The enactment of this legislation would not have a significant regulatory impact on the public, nor would it constitute an undue regulatory burden on the national party committees, the President-elect and Vice President-elect regarding disclosure of private cash and certain in-kind contributions. Nor would the bill impose a significant burden on the President-elect regarding disclosure of a list of the names, most recent employment, and sources of funding of all transition personnel. Moreover, the Committee endeavored to reduce the regulatory impact as much as possible by giving the national party committees and the President-elect reasonable and adequate time to file their disclosure reports with GSA.

The Committee believes that the benefits of these reporting requirements far outweigh the potential costs. By reducing the potential for hidden conflicts of interest, these disclosure requirements should result in better management of presidential transitions and increased public confidence in government.

VII. Cost Estimate of Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of S. 2037. The following is CBO's estimate of the potential costs of this legislation:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 19, 1988.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2037, the Presidential Transitions Effectiveness Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2037
2. Bill title: Presidential Transitions Effectiveness Act
3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, April 14, 1988.
4. Bill purpose: The bill would authorize the appropriation of $3.5 million in the year preceding a Presidential transition year for

services to the President-elect and Vice President-elect. In addition, the bill would authorize the appropriation of $0.2 million for reimbursement of expenses to each national party committee whose candidate receives at least 25 percent of the popular vote for President. The bill also would provide an inflation adjustment for these authorizations beginning in 1993. Under current law, only $2.0 million is authorized for these purposes in the Presidential transition year, and no inflation adjustment is allowed.

The bill also would require certain disclosures by the national party committees, the President-elect, and the Vice President-elect, and would make other changes in Presidential transition policy.

5. Estimated cost to the federal government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	1993
Estimated authorization level	3.9	−2.0			4.2	−2.0
Estimated outlays	0.2	1.7			0.2	2.0

The costs of this bill fall within budget function 800.

Basis of Estimate: This estimate assumes that S. 2037 will be enacted during fiscal year 1988 and that the amounts authorized will be appropriated. The table reflects both the increase in the authorization and the shift of the authorization from the transition year (1989 and 1993) to the preceding year (1988 and 1992).

Regarding the authorization for payments to national party committees, CBO assumes that only two national parties would meet the qualification of 25 percent of the popular vote, thus making the 1988 authorization for this purpose $0.4 million. Adjustments for inflation are based on CBO's baseline economic assumptions. The estimate of outlays is based on historical spending patterns of the Presidential transition account and assumes there would be a Presidential transition in 1993.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jim Hearn.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director, for Budget Analysis.

VIII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Presidential Transition Act of 1963 (3 U.S.C. 102 note)

SECTION 3(A)(4) OF THAT ACT

(4)(A) Payment of travel expenses and subsistence allowances, including rental of Government or hired motor vehicles, found neces-

sary by the President-elect or Vice-President-elect, as authorized for persons employed intermittently or for persons serving without compensation by section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2) [section 5703 of Title 5], as may be appropriate;

(B) When requested by the President-elect or Vice President-elect or their designee, and approved by the President, Government aircraft may be provided for transition purposes on a reimbursable basis; when requested by the President-elect, the Vice President-elect, or the designee of the President-elect or Vice President-elect, aircraft may be chartered for transition purposes, any collections from the Secret Service, press, or others occupying space on chartered aircraft shall be deposited to the credit of the appropriations made under section 9 of this Act;

SECTION 3 (B) OF THAT ACT

[b The Administrator shall expend no funds for the provision of services and facilities under this Act in connection with any obligations incurred by the President-elect or Vice-President-elect before the day following the date of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2 (sections 1 and 2 of this title), or after the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.]

(b) The Administrator may not expend funds for the provision of services and facilities under section 3 of this Act in connection with any obligations incurred by the President-elect or Vice President-elect—

(1) before the day following the date of the general elections held to determine the electors of President and Vice President under sections 1 or 2 of title 3, United States Code; or

(2) after 30 days after the date of the inauguration of the President-elect as President and the inauguration of the Vice President-elect as Vice President.

SECTION 4 OF THAT ACT

SEC. 4. Services and facilities authorized to be provided to former Presidents and former Vice Presidents.

(a) The Administrator is authorized to provide, upon request, to each former President and each former Vice President, for a period not to exceed six months from the date of the expiration of his term of office as President or Vice President, for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this Act to be provided to Presidents-elect and Vice-Presidents-elect. Any person appointed or detailed to serve a former President or former Vice President under authority of this section shall be appointed or detailed in accordance with, and shall be subject to, all of the provisions of section 3 of this Act applicable to persons appointed or detailed under authority of that section. The provisions of the Act of August 25, 1958 (72 Stat. 838; 3 U.S.C. 102, note {classified as a note under this section}), other than subsections (a) and (e) shall

not become effective with respect to a former President until six months after the expiration of his term of office as President.

(b) The Administrator may obligate funds for the purposes of this section for a President and Vice President during a period to begin not more than 30 days before the expiration of their terms of office as President and Vice President.

SECTION 5 OF THAT ACT

[SEC. 5.] *SEC. 9.* Authorization of appropriations.

(a) There are hereby authorized to be appropriated to the Administrator such funds as may be necessary for carrying out the purposes of this Act, except that with respect to any one Presidential transition—

(1) not more than [$2,000,000] *$3,500,000* may be appropriated for the purposes of providing services and facilities to the President-elect and Vice-President-elect under section 3 [, and] ;

(2) not more than $1,000,000 may be appropriated for the purposes of providing services and facilities to the former President and former Vice President under section 4[.]; *and*

(3) not more than $200,000 may be appropriated for the purpose of providing reimbursement to a national party committee as defined in section 5(c)(2) or the designee of such a committee as provided under section 6(d) for transition planning expenses under sections 5 and 6.

(b) The President shall include a proposed appropriation for carrying out the provisions of this Act in the budget transmitted to the Congress under the provisions of section 1105 of title 31, United States Code, for each fiscal year preceding the fiscal year in which the term of office of such President shall expire.

(c) The amounts authorized to be appropriated under subsection (a) shall by increased by an inflation adjusted amount, based on an estimate by the Administrator of actual increases in the cost of transition services and expenses which have occurred in the years following the most recent Presidential transition, which shall be included in the budget transmitted to the Congress under the provisions of section 1105 of title 31, United States Code, by the President for each fiscal year preceding the fiscal year in which the term of office of such President shall expire.

[The President shall include in the budget transmitted to Congress, for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of this Act.]

The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is further amended by inserting after section 4 the following new sections:

REIMBURSEMENT OF EXPENSES FOR TRANSITION PLANNING

SEC. 5. (a) Subject to the provisions of subsection (b), the Administrator is authorized to provide reimbursement of pre-election transition planning expenses from funds appropriated under section 9 to each national party committee of a major party candidate for President.

(b)(1) Funds provided under subsection (a) may not be expended for any purpose, except for transition planning as defined pursuant to subsection (c)(3) and transition expenses described pursuant to section 6.

(2) The Administrator may not provide funds under subsection (a) to a national party committee in any year in which the Presidential candidate of such party is the incumbent President.

(c) As used in this section the term—

(1) "major party candidate" means a Presidential candidate of a political party that has received 25 percent or more of the total number of popular votes received by all candidates for such office in the preceding election, who appear as a candidate for President on the general election ballot;

(2) "national party committee" means the committee organization of a political party of a major party candidate; and

(3) "transition planning" means—

(A) the development of a personnel process for use in the transition for the recruitment, selection, clearance, and orientation of Presidential appointees to executive level positions as defined pursuant to section 5311(b)(2) of title 5, United States Code;

(B) the establishment of a transition organization and operating plan;

(C) the identification of potential transition personnel; and

(D) liaison with the General Services Administration, the Office of Personnel Management, the National Archives and Record Administration, and other Federal departments and agencies regarding preparation of the President-elect or the Vice President-elect for the assumption of official duties as President and Vice President.

REIMBURSEMENT OF TRANSITION EXPENSES TO BE PROVIDED TO NATIONAL PARTY COMMITTEE

SEC. 6. (a) Subject to the provisions of section 5(b), the Administrator is authorized to provide, funds to each national party committee or a major party candidate as defined in section 5(c)(1), for reimbursement of transition planning as defined in section 5(c)(3) and transition expenses as described in subsection (b). The Administrator shall determine the amount of reimbursement necessary to carry out such planning upon the request of, and after consultation with, a national party committee.

(b) Transition expenses under this section shall include expenses for—

(1) suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies at such place or places within the United States as the national party committee shall designate after consultation with the Administrator;

(2) the compensation of members of office staffs designated by a national party committee at rates determined by such committee not to exceed the rate provided for the grades of GS–18 under section 5332 of title 5, United States Code, except that no

employee of any agency of any branch of the Government may be detailed to such staffs on a reimbursable or non-reimbursable basis; and

(3) the procurement of services of experts or consultants or organizations whereof for a national party committee.

(c) Funds provided under section (a) shall apply to transition expenses that occur—

(1) no earlier than 14 days following the termination of the nominating convention of the applicable political party; and

(2) no later than one day following the date of the general elections held to determine the electors of the President and the Vice President.

(d) A national party committee may designate the major party candidate as the agent of the committee authorized to make such determinations and perform such functions as may be provided in connection with transition expenses and reimbursement under this section. In the case of such designation by the national party committee, the candidate may delegate any authority exercised under this section to an assistant.

DISCLOSURE OF PRIVATE TRANSITION PLANNING FUNDS

SEC. 7. (a)(1) The national party committees or designees of such committees (as a condition for receiving funds pursuant to sections 5 and 6) shall disclose to the Administrator the date of contribution, source, amount, and expenditure thereof of all private money (including currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand) received for the purposes of transition planning.

(2) Disclosures made under paragraph (1) shall be—

(A) in the form of a report to the Administrator within 90 days after the date of the general election held to determine the electors of the President and the Vice President; and

(B) made available to the public by the Administrator upon receipt by the Administrator.

(b)(1) The President-elect and Vice President-elect (as a condition for receiving services under section 3 and for funds provided under section 9(a)(1)) shall disclose to the Administrator the date of contribution, source, amount, and expenditure thereof of all private money (including currency of the United States and of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand) received either before or after the date of the general election for use in the preparation of the President-elect or Vice President-elect for the assumption of official duties as President or Vice President.

(2) Disclosures made under paragraph (1) shall be—

(A) in the form of a report to the Administrator within 90 days after the inauguration of the President-elect as President and the Vice President-elect as Vice President; and

(B) made available to the public by the Administrator upon receipt by the Administrator.

DISCLOSURE OF REPRESENTATIVES OF THE PRESIDENT-ELECT AND VICE PRESIDENT-ELECT DURING TRANSITION

SEC. 8. (a) The President-elect and Vice President-elect (as a condition for receiving services provided under section 3 and funds provided under section 9(a)(1)) shall disclose to the public a list of the names of all transition personnel (full-time or part-time) and the most recent employment and source of funding which support the transition activities of such personnel.

(b) Disclosures made under subsection (a) shall be—

(1) in the form of 3 reports to the Administrator;

(2) submitted within thirty, sixty, and ninety days after the date of the general election held to determine the electors of the President and the Vice President; and

(3) made available to the public by the Administrator upon receipt by the Administrator.

SECTION 5723 OF TITLE 5, UNITED STATES CODE

At the end thereof, add

The provisions of paragraph (2) shall apply to any individual performing transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) from the place of residence of such individual at the time following the most recent general elections held to elect the President, to the assigned duty station of such individual.

SECTION 3345 OF TITLE 5, UNITED STATES CODE

§ 3345. Details; to office of Executive *agency* or military department

When the head of an Executive [department] *agency* or military department dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

TABLE OF SECTION HEADINGS FOR CHAPTER 33 OF TITLE 5, UNITED STATES CODE, ITEM RELATING TO SECTION 3345

§ 3345. Details; to office of head of Executive *agency* or military department.

SECTION 3348 OF TITLE 5, UNITED STATES CODE

A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than [30 days] *120 days, unless a nomination to fill such vacancy has been submitted to the Senate in which case the person so designated may serve—*

(1) until the Senate confirms the nomination;

(2) for no more than 30 days after the date that the Senate rejects the nomination; or

(3) if designated when the Congress has adjourned sine die or at the end of a session, for no more than 120 days after the Congress next reconvenes.

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